SUPREME COURT, U. S.
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JOHN F. DAVIS, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 453

CHARLES L. JOLLY,

Appellant

v.

MORGAN COUNTY JUNIOR COLLEGE DISTRICT, et al

Appellees.

ON APPEAL FROM THE SUPREME COURT OF COLORADO

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BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

While the appellant's position is set forth adequately in the Jurisdictional Statement, it seems appropriate to reply to several contentions asserted by appellees in their Motion to Dismiss and Motion to Affirm.

RAISING FEDERAL QUESTION

Appellees contend that appellants could have raised the federal question in the Supreme Court of Colorado, and appellees cite Rule 115 (C)(5), Colorado Rules of Civil Procedure, in support of this contention. It is of great significance to note that appellees omitted citing other important Rules which were applicable to the case at bar.

Rule 59(f), Colorado Rules of Civil Procedure, provides as follows:

> "The party claiming error in the trial of any case (except as provided in subsection (h) of this rule) must move the trial court for a new trial as herein-above

provided and the trial court may not dispense with the necessity for filing such a motion but may dispense with oral argument on the motion after it is filed, *and only questions presented in such motion will be considered by the Supreme Court on review.* (*Emphasis Supplied*)

Plaintiff appellant herein raised the federal question in the trial court, not only in the Complaint (Jurisdictional Statement, Appendix C, page 40), but also on oral argument to the trial court. The appellant prevailed in the trial court and therefore, there was no need to move for a new trial within the time limitation. Must an appellant place in jeopardy a favorable judgment from a trial court, or surrender the benefits which flow therefrom, by moving for a new trial, merely in order to raise a federal question on review by the Supreme Court of Colorado? Appellant submits that such would be a strained interpretation of the Rules of Civil Procedure, which should be interpreted in the light of justice.

In Colorado, it is mandatory upon a party claiming error to move the trial court for a new trial, and only questions presented in a motion for a new trial will be considered on review. *Security Building Co.* v. *Lewis*, 255 P. 2d. 405, 127 Colo. 139; *Watson* v. *Watson* 310 P. 2d. 554, 135 Colo. 296; *Patton* v. *Ten Broeke Carriage Mfg. Co.*, 3 Colo. App. 267.

It is submitted that a literal interpretation of the Colorado Rules of Civil Procedure pertaining to a motion for a new trial, at which time specific errors must be asserted, would only require a successful plaintiff to jeopardize the benefits flowing therefrom in order to raise a federal question in the Supreme Court of Colorado, and that such interpretation should not prevail insofar as it relates to appellees' motions or to this Honorable Court taking jurisdiction in the case at bar.

SUPREME COURT OF COLORADO RAISED FEDERAL QUESTION

Appellees contend that, even though the Supreme Court of Colorado relied upon the decision of this Honorable Court in *Williams* v. *Mayor and City Council of Baltimore*, 289 U.S. 36, 53 S. Ct. 431, 77 L. Ed. 1015; in its own decision (Jurisdictional Statement, Appendix B, page 26), such fact is not indicative that the Supreme Court of Colorado determined the case on federal grounds.

An action arises under the Constitution or a law of the United States so as to give a federal court jurisdiction whenever the correct decision of the action depends on the construction of the Constitution or law. *Cohens* v. *State of Virginia*, 19 U.S. 264, 6 Wheat. 264, 5 L. Ed. 257; *Patton* v. *Brady*, 22 S. Ct. 493, 184 U.S. 608, 46 L. Ed. 713. A decision of a state supreme court on a federal constitutional question affords a basis for jurisdiction by the United States Supreme Court. *Gant* v. *Oklahoma City*, 53 S. Ct. 530, 289 U.S. 98, 77 L. Ed. 1058. The Supreme Court of the United States has the duty by its decisions to preserve the supremacy of the laws of the United States and will disregard all state laws and state decisions which conflict therewith. *Amis* v. *Smith*, 41 U.S. 303, 16 Pet. 303, 10 L. Ed. 973.

TAXATION AND FEDERAL ISSUE

Appellees contend that a state may tax its citizens in any manner it so desires, and that such citizens are not entitled to the protection afforded by the equal protection of the laws clause of the Fourteenth Amendment. Appellant vehemently disagrees with this contention.

The state must take care to accord all in the same class equality of rights. *Walters* v. *City of St. Louis, Mo.*, 74 S. Ct. 505, 347 U.S. 231, 98 L. Ed. 660. Appellant recognizes that no iron rule of equality between different classes is necessary to prevent taxes from being declared unconstitutional. *State of Alaska* v. *Arctic Maid*, 81 S. Ct. 929, 366

U.S. 199, 6 L. Ed. 2d. 227. In the imposition of a tax, a state must proceed upon a *rational* basis, and may not resort to a classification that is palpably arbitrary. *Allied Stores of Ohio, Inc.* v. *Bowers*, 79 S. Ct. 437, 358 U.S. 522, 3 L. Ed. 2d. 480. Common justice requires that taxation so far as possible shall be equal. *Society of Savings* v. *Cottie*, 73 U.S. 594, 6 Wall. 594, 18 L. Ed. 897; *Union Passenger Ry. Co.* v. *City of Philadelphia*, 101 U.S. 528, 11 Otto 528, 25 L. Ed. 912.

Appellant also disagrees with the statement of appellees that such districts in Colorado have the authority and do levy taxes. Appellant submits that in Colorado only the County Commissioners of the county wherein the territory of the district is located levy such ad valorem taxes upon the property located therein.

CONCLUSION

Appellant concludes that appellees' Motions To Dismiss And To Affirm should be denied for the reasons as set forth in the Jurisdictional Statement and hereinabove.

Respectfully submitted,

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